

Protest of	)	
COMPO CORPORATION	)	Date: May 3, 1988
Solicitation No. 169990-88-A-0011	)	P.S. Protest No. 88-22

### DECISION

Compo Corporation (Compo) protests the rejection of its bid as nonresponsive under Invitation For Bids No. 169990-88-A-0011 (IFB). The IFB, issued on March 2, 1988 by the Central Procurement & Material Management Service Center, Chicago, IL, sought warehousing services for Postal Service equipment. The first paragraph under Section A "Items and Prices" states:

Location of warehouse to be within seventy miles of Intersection Interstate 90 and U.S. Highway 20 in the metropolitan area of Rockford, Illinois.

Item A-5 of the IFB requested bidders to state the name and street address of the warehouse location offered. Item B-5 required bidders to submit "full information on the facility/ location," including information on its accessibility to major transportation arteries.

Bids were opened on March 25, 1988. The first-low bid was rejected as nonresponsive. Compo submitted the second-low bid of \$10,870 per month. Compo offered a warehouse located at 3220 West Fond du Lac, Milwaukee, WI. The contracting officer measured the straight-line distance between Compo's warehouse and the intersection of Interstate 90 and U.S. highway 20 on two different maps. Each measurement indicated the distance between Compo's warehouse and the stated intersection as over 75 miles.

On March 31, 1988, the contracting officer informed Compo by telephone that the location of its warehouse did not fall within the 70 mile limit specified by the IFB. On April 4, 1988, Compo submitted a letter to the contracting officer protesting the award of the IFB to any bidder other than itself. The ground for protest stated in the letter was "the inability of [the contracting officer] to adequately explain ... why our bid considering all factors is not acceptable." On April 5, 1988, the contracting officer wrote to Compo, stating that its bid was rejected as nonresponsive pursuant to Postal Contracting Manual (PCM) 2-404.2, as its warehouse was not within 70 miles of the intersection designated in the IFB.

On April 6, 1988, the Acting Head of Procuring Activity forwarded the April 14 protest to this office for consideration pursuant to PCM 2-407.8(e). On April 11, 1988, this office

received a supplement to Compo's protest, contending that: (1) the warehouse location stated by the IFB is susceptible to an alternate interpretation, (2) the 70 mile range was not included in the IFB's evaluation criteria and was thus an improper basis for rejecting Compo's bid pursuant to PCM 2-407.5, and (3) the distance by which it is outside the 70 mile range may be waived as a minor informality pursuant to PCM 2-405, particularly in light of the savings that could be achieved if Compo was awarded the contract. On April 14, 1988, the contracting officer responded to the contentions raised by Compo's supplemental protest.<sup>1/</sup>

Compo first argues that the warehouse location requirement specified in the IFB is susceptible to an alternate interpretation.<sup>1/</sup> Compo, however, does not specify the alternate interpretation it has in mind. The warehouse location requirement of the IFB is unambiguous. A solicitation is not ambiguous unless susceptible to two or more reasonable interpretations. Freedom Elevator Corporation, Comp. Gen. Dec. B-228887, December 7, 1987, 87-2 CPD & 561. The IFB requires the warehouse to be "within seventy miles of Intersection Interstate 90 and U.S. Highway 20 in the metropolitan area of Rockford, Illinois." It is clear that the radius of the 70 mile area is to be measured from the designated intersection, not from the undefined environs of metropolitan area of Rockford, IL.<sup>2/</sup> The phrase "metropolitan area of Rockford, Illinois" serves only to give a general description of where the designated intersection can be found, not a further measuring point. The only reasonable interpretation to be given this section is that the 70 miles is to be measured from the specified intersection.<sup>3/</sup>

In regard to Compo's second contention, the fact that the required warehouse location is described in Section A "Items and Prices," instead of Section B "Evaluation and Award Factors," has no bearing on the rejection of Compo's bid. The purpose of Section B of the IFB is to describe the method of contract award among responsive and responsible bidders. Compo's bid did not reach that stage.

Finally, Compo argues that the difference between the location of its warehouse and the 70 mile limit should be waived as a minor informality pursuant to PCM 2-405.<sup>4/</sup>

<sup>1/</sup> As Compo's supplemental grounds of protest was received by this office within 10 working days from the contracting officer's March 31, 1988 telephone call to Compo, the supplemental grounds of protest are timely pursuant to PCM 2-407.8(d)(3).

<sup>2/</sup> Compo does not contend that its warehouse is within 70 miles of the intersection designated by the IFB.

<sup>3/</sup> There is a potential ambiguity concerning how the 70 miles is to be measured, whether straight-line distance or actual highway mileage. While the better practice would have been to specify which method was to be used in the IFB, the failure to do so did not affect Compo since its warehouse did not meet the 70 miles requirement under the more liberal straight-line test.

<sup>4/</sup> If the protester had any doubts as to the proper interpretation of the 70 mile limitation, it should have contacted the contracting officer prior to bidding. See Fisher Marine Repair Corp., Comp. Gen. Dec. B-228297, November 20, 1987, 87-2 CPD & 497. To the extent Compo's protest challenges the terms of the solicitation, it is untimely. PCM 2-407.8(d)(1).

<sup>5/</sup> PCM 2-405 provides, in pertinent part:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no

However, PCM 2-405 is not applicable to this situation. That section applies to matters of responsiveness, not responsibility. Although treated as a matter of responsiveness by the contracting officer, the IFB's requirement that bidders' facilities be located within a certain area relates to responsibility, not responsiveness. Advertising Distributors of Washington, Inc., Comp. Gen. Dec. B-187070, February 15, 1977, 77-1 CPD & 111; Oceanside Mortuary, Comp. Gen. Dec. B-186204, July 23, 1976, 76-2 CPD & 74. Geographic restrictions, such as present here, constitute definitive criteria of responsibility.

Definitive criteria of responsibility outline a minimum standard of experience, expertise, or facilities which are a prerequisite to an affirmative determination of responsibility. Id.

When such criteria are purposely placed in a solicitation they cannot be waived. To do so would be misleading and prejudicial to other bidders which have a right to rely on the wording of the solicitation and thus reasonably to anticipate the scope of competition for award. Haughton Elevator Division, Reliance Electric Company, Comp. Gen. Dec. B-184865, May 3, 1976, 55 Comp. Gen. 1051, 76-1 CPD & 294.

In a similar case, the Comptroller General has held that it was improper for an agency to award a contract to a bidder whose facilities were 33 minutes and 35 seconds traveling time from a designated point when the IFB required the facility to be within 30 minutes traveling time. Oceanside Mortuary, supra. The Comptroller General reached this conclusion despite the agency's view that the amount of time in excess of the 30 minute limitation was minor. By the same token, the amount by which Compo's warehouse is outside the 70 miles limit cannot be waived.

The contracting officer therefore properly rejected Compo's bid, as Compo could not comply with the IFB's definitive responsibility criteria that its warehouse be within 70 miles from the designated intersection. While the contracting officer labeled the ground for the rejection as one of nonresponsiveness, rather than nonresponsibility, the terminology used does not affect the propriety of the rejection of Compo's bid. See Perkiomen Airways, Ltd., P.S. Protest No. 75-71, February 3, 1976.

The protest is denied.

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**[checked against original JLS 2/24/93]**

effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of ... the performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders.